



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FISH & NEAVE IP GROUP
ROPES & GRAY LLP
1251 AVENUE OF THE AMERICAS FL C3
NEW YORK NY 10020-1105

COPY MAILED

JUN 22 2006

OFFICE OF PETITIONS

In re Application of :
Bemis et al. :
Application No. 09/886,773 :
Filed: June 21, 2001 :
Attorney Docket No. VPI-04DIV5 :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed September 9, 2005, to withdraw the holding of abandonment in the above-identified application. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

A review of the record reveals that on March 1, 2004, the Office mailed a Notice to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures (Notice to Comply), which set a one-month extendable period to reply. On April 1, 2004, applicants submitted a Statement to Verify Content of Computer Readable Form Submission and a paper copy of the sequence listing. However, on the same day (April 1, 2004), the Office mailed a Notice to Comply, stating that applicants' Amendments filed on March 3, 2004, and March 11, 2004, were non-responsive to the Notice of March 1, 2004. Additionally, the Notice to Comply set a one-month extendable time period for applicants to comply with the sequence disclosure rules. On February 28, 2005, applicants submitted a Corrected Reply to the Notice to Comply. On July 14, 2005, the Office mailed a Notice of Abandonment, stating that the application became abandoned for failure to file a proper reply to the Office letter mailed on April 1, 2004. The Notice of Abandonment further indicated:

On 3/1/04, a requirement for CFR sequence listing was mailed. Pursuant to the response filed 4/1/04, applicants made an (unsuccessful) attempt to comply with the sequence listing requirement. In a letter mailed 4/1/04, applicants were informed that they had still not complied with sequence rules. Applicants did finally comply with the sequence rules, but not until 2/18/05, which is beyond the 6 month statutory deadline for compliance.

On September 9, 2005, applicants filed the present petition. Applicants asserted that the Notice to Comply and the Response, both of April 1, 2004, had crossed in the mail. Applicants stated that the examiner did not provide them with written notice that the Response of April 1, 2004, was defective.

On further review, the record reveals that the Notice to Comply and the Response, both of April 1, 2004, had crossed in the mail. Additionally, the record indicates that the examiner did not mail any Office communication after the Notice to Comply of April 1, 2004, informing applicants in writing that he had considered their Response of April 1, 2004, and determined it was defective. Additionally, the examiner did not set a new time period for applicants to respond to correct the deficiencies in their April 1, 2004 Response.

For these reasons, the petition under 37 CFR 1.181 is **GRANTED**. The holding of abandonment is withdrawn.

The matter is being referred to Technology Center Art Unit 1654.

Telephone inquiries should be directed to the undersigned at (571) 272-3211.

A handwritten signature in black ink that reads "Christina Donnell". The signature is written in a cursive, flowing style.

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions